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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket No. 160108022-6022-01]

RIN 0660-AA31

Implementing Certain Provisions of the Spectrum Pipeline Act With Respect to the Duties of the Technical Panel

AGENCY: National Telecommunications and Information Administration.

ACTION: Final Rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) amends its regulations with respect to the duties of the Technical Panel to include the new responsibility for review and approval of plans submitted by federal entities that request funding from the Spectrum Relocation Fund for the purposes set forth in Section 1005(a)(2) of the Spectrum Pipeline Act of 2015.

DATES: The final rule becomes effective on [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA, (202) 482-1816 or mbrown@ntia.doc.gov. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482-7002 or press@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.*, as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(l), 928)

and the Spectrum Pipeline Act of 2015, Title X of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 621 (Nov. 5, 2015) (47 U.S.C. 923, 928).

I. Background

The Commercial Spectrum Enhancement Act of 2004 (CSEA) established the Spectrum Relocation Fund from which agencies could recover relocation costs in order to facilitate clearing of the eligible frequency bands auctioned by the Federal Communications Commission.¹ The Middle Class Job Creation and Tax Relief Act of 2012 (Tax Relief Act) amended the CSEA to permit federal entities to recover costs for sharing of spectrum and to receive additional reimbursement of expenses for planning for auction participation, use of alternative technologies, replacement equipment, and research and analysis of potential spectrum sharing solutions.² The Tax Relief Act also required NTIA to establish a Technical Panel to review and approve federal entities' transition plans to facilitate the relocation of, and sharing of spectrum with, U.S. Government stations in spectrum bands reallocated from federal use to non-federal use or shared use.³

The Spectrum Pipeline Act of 2015 modified the CSEA by, among other things, appropriating \$500,000,000 from the Spectrum Relocation Fund on the date of enactment and not more than 10

¹ Commercial Spectrum Enhancement Act of 2004, Pub. L. No. 108-494, 118 Stat. 3986 (2004) (CSEA) (amending, among other provisions, Sections 113(g) and 118 of the NTIA Organization Act, codified at 47 U.S.C. 923 and 928). Through the CSEA, Congress amended the NTIA Organization Act to provide, among other things, for reimbursement of costs associated with relocation of Federal entities' spectrum-dependent operations from the proceeds of spectrum auctions.

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Section 6701-6703, 126 Stat. 245 (Feb. 22, 2012) (amending, among other provisions, Sections 113(g)-(i) and 118 of the NTIA Organization Act, codified at 47 U.S.C. 923 and 928).

³ Relocation of and Sharing Spectrum by Federal Government Stations – Technical Panel and Dispute Resolution Boards, 78 FR 5310 (Jan. 25, 2013) (codified at 47 CFR pt. 301).

percent of future deposits for the Office of Management and Budget (OMB) to make payments to federal entities for research and development, engineering studies, economic analyses, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use.⁴ This Final Rule implements those provisions of the Spectrum Pipeline Act regarding the review and approval by the Technical Panel of plans submitted by federal entities requesting such additional payments from the Spectrum Relocation Fund.

II. Discussion

NTIA is amending its regulations to conform to provisions of the recently enacted Spectrum Pipeline Act. Accordingly, 47 CFR Part 301 is amended as discussed below.

Submission and Contents of a Spectrum Pipeline Plan

The Spectrum Pipeline Act provides that a federal entity that seeks payments pursuant to its provisions must submit a plan (hereafter referred to as a “Spectrum Pipeline Plan”) to the Technical Panel. Such a plan must describe the activities the federal entity will conduct with the funds to improve the efficiency and effectiveness of the spectrum use of federal entities.⁵

Payments may be requested for research and development, engineering studies, economic analyses, activities with respect to systems, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use. For requests involving activities with respect to systems that improve the efficiency or effectiveness of the spectrum use of federal entities, such

⁴ Spectrum Pipeline Act of 2015, Title X of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 621 (Nov. 5, 2015) (Spectrum Pipeline Act).

⁵ Spectrum Pipeline Act of 2015, Section 1005(a)(2) (amending Section 118 of the NTIA Organization Act by inserting a new subsection (g), to be codified at 47 U.S.C. 928(g)) and Sections 1005(b) and (c) (amending Section 113(h)(3)(C) and 113(g)(1) of the NTIA Organization Act by updating the scope of NTIA’s administrative support of the Technical Panel and modifying the definition of “Eligible Federal Entities,” respectively).

systems shall include: (1) systems that have increased functionality or that increase the ability of a federal entity to accommodate spectrum sharing with non-federal entities; (2) systems that consolidate functions or services that have been provided using separate systems; or (3) non-spectrum technology or systems.⁶ Accordingly, NTIA amends its regulations to list the requirements for the submission of a Spectrum Pipeline Plan.

Review by Technical Panel

The Spectrum Pipeline Act requires the Technical Panel to approve or disapprove a Spectrum Pipeline Plan not later than 120 days after the federal entity submits the plan.⁷ It also provides the criteria that the Technical Panel will use to review such plan. Specifically, the Spectrum Pipeline Act states that the Technical Panel shall consider whether the activities the federal entity will conduct with the payment will: (1) increase the probability of relocation from or sharing of federal spectrum; (2) facilitate an auction intended to occur not later than 8 years after the payment; and (3) increase the net expected auction proceeds in an amount not less than the time value of the amount of the payment.⁸ It also requires the Technical Panel to consider whether the funding transfer will leave sufficient amounts in the Spectrum Relocation Fund for its other purposes.⁹ The regulations also provide an address for submissions to the Technical Panel and the Dispute Resolution Board. Accordingly, NTIA amends its regulations at 47 CFR 301.115(c) to specify the requirements for Technical Panel review of a Spectrum Pipeline Plan.

Administrative Procedure Act

⁶ 47 U.S.C. 928(g)(2)(B).

⁷ 47 U.S.C. 928(g)(2)(E)(i).

⁸ 47 U.S.C. 928(g)(2)(E)(ii)(I).

⁹ 47 U.S.C. 928(g)(2)(E)(ii)(II).

The amendments to 47 CFR Part 301 in this Final Rule relate solely to the internal management of the agency and, as such, are not subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2). These amendments do not affect the rights or obligations of the public, but relate solely to the obligations of federal entities seeking payments from OMB from the Spectrum Relocation Fund.

Executive Order 12866

This regulation has been determined not to be significant for purposes of Executive Order 12866.

Congressional Review Act

It has been determined that this final rule is not major under 5 U.S.C. 801 *et seq.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply since the rule is exempt from the requirement of the Administrative Procedure Act.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact.

Paperwork Reduction Act

This document does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

List of Subjects in 47 CFR Part 301

Administrative practice and procedure, Communications Common Carriers, Communications equipment, Defense communications, Government employees, Satellites, Radio, Telecommunications.

Dated: January 14, 2016.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

- For the reasons set forth in the preamble, NTIA amends 47 CFR Part 301 as follows:

PART 301 – RELOCATION OF AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS

1. Revise the authority citation for part 301 to read as follows:

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.*, as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(l), 928) and the Spectrum Pipeline Act of 2015, Title X of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 621 (Nov. 5, 2015) (47 U.S.C. 923, 928).

2. Revise § 301.1 to read as follows:

§ 301.1 Purpose.

The purpose of this part is to set forth procedures for the Technical Panel and Dispute Resolution Board as required pursuant to the National Telecommunications and Information Administration Organization Act (hereinafter “NTIA Organization Act”), as amended (47 U.S.C. 923(g)–(l) and 928).

3. Amend § 301.20 as follows:

- a. Revise the definitions of “Eligible Federal Entity” and “Federal Entity”.
- b. Add a definition of “Spectrum Pipeline Plan” in alphabetical order.

The revisions and addition read as follows:

§ 301.20 Definitions.

* * * * *

Eligible Federal Entity means any Federal Entity that:

- (1) Operates a U.S. Government station; and
- (2) That incurs relocation costs or sharing costs because of planning for an auction of eligible spectrum frequencies or the reallocation of eligible spectrum frequencies from Federal use to exclusive non-Federal use or to shared use.

* * * * *

Federal Entity means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305). [47 U.S.C. 923(l)]

* * * * *

Spectrum Pipeline Plan means a plan submitted by a Federal Entity pursuant to section 118(g)(2)(E)(i) of the NTIA Organization Act (47 U.S.C. 928(g)(2)(E)(i)).

* * * * *

4. Add § 301.30 to subpart A to read as follows:

§ 301.30 Address for submissions to the Technical Panel and Dispute Resolution Board.

Submissions to the Technical Panel and the Dispute Resolution Board under this section shall be made to the Office of the Assistant Secretary, National Telecommunications and Information Administration, Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

5. Add § 301.115 to read as follows:

§ 301.115 Spectrum Pipeline Plans.

(a) *Submission of Spectrum Pipeline Plan.* A Federal Entity that requests payment from OMB as provided in section 118(g) of the NTIA Organization Act (47 U.S.C. 928(g)) must submit a plan to the Technical Panel for approval.

(b) *Contents of Spectrum Pipeline Plan.* A Spectrum Pipeline Plan submitted in accordance with this section must describe activities for research and development, engineering studies, economic analyses, activities with respect to systems, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use of Federal Entities in order to make available frequencies for reallocation for non-Federal use or shared Federal and non-Federal use, or a combination thereof, for auction in accordance with such reallocation. Activities with respect to systems that improve the efficiency or effectiveness of the spectrum use of Federal Entities shall include:

(1) Systems that have increased functionality or that increase the ability of a Federal Entity to accommodate spectrum sharing with non-Federal entities;

(2) Systems that consolidate functions or services that have been provided using separate systems; or

(3) Non-spectrum technology or systems.

(c) *Review by Technical Panel—(1) Deadline for approval.* Not later than 120 days after a Spectrum Pipeline Plan has been submitted to the Technical Panel in accordance with this section, the Technical Panel shall approve or disapprove such plan.

(2) *Criteria for Review.* As part of its review, the Technical Panel shall consider whether:

(i) The activities that the Federal Entity will conduct with the payment will:

(A) Increase the probability of relocation from or sharing of Federal spectrum;

(B) Facilitate an auction intended to occur not later than 8 years after the payment; and

(C) Increase the net expected auction proceeds in an amount not less than the time value of the amount of the payment.

(ii) The transfer will leave sufficient amounts in the Spectrum Relocation Fund for the other purposes of such fund.

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